

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION

SHAMEKA L. SMITH

PLAINTIFF

VS.

CIVIL ACTION NO. 3:15-cv-106-WHB-JCG

COMMISSIONER OF SOCIAL SECURITY

DEFENDANT

**OPINION AND ORDER**

This cause is before the Court on the Report and Recommendation ("R and R") of United States Magistrate Judge John C. Gargiulo. In his R and R, Judge Gargiulo recommends that the decision of the Commission of Social Security to deny Shameka L. Smith's applications for Supplemental Security Income and Disability Insurance Benefits be affirmed. After considering the R and R<sup>1</sup>, the other pleadings in this case, as well as relevant authorities, the Court finds the R & R should be adopted in its entirety.

**I. Discussion**

In December of 2009, Shameka L. Smith ("Smith") filed applications for Supplemental Security Income ("SSI") and Disability Insurance Benefits ("DIB"). Following the initial denial of both applications, Smith requested an administrative

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<sup>1</sup> The parties were required to file objections to the R and R on or before August 15, 2016. No objections were filed.

hearing. The hearing was conducted by Administrative Law Judge Mary Ellis Richardson who, on May 25, 2012, entered a decision denying Smith's SSI and DIB claims. The Appeals Counsel granted Smith's request for review. On December 17, 2014, the Appeals Counsel affirmed ALJ Richardson's decision thereby rendering it the final decision in the matter.

Thereafter, Smith filed a Complaint in this Court seeking judicial review of the final decision of the Social Security Commissioner. In her brief, Smith assigned the following errors: (1) the ALJ erred in evaluating the credibility of Smith's testimony; (2) the ALJ erred in evaluating Smith's obesity; (3) the ALJ bolstered her opinion by using purely boilerplate language; (4) the ALJ erred in finding Smith could return to her past work; and (5) the ALJ erred by not according proper weight to evidence submitted by Smith's mother. The matter came before United States Magistrate Judge John C. Gargiulo who, after considering the pleadings including Smith's assignments of error, the administrative record, and relevant authorities, found there was substantial evidence to support the ALJ's credibility determinations as well as her decisions regarding whether Smith could return to work and the weight to be afforded the testimony of Smith's relatives. See R and R [Docket No. 18], 10-11, 13-16. Judge Gargiulo additionally found that Smith's arguments that the ALJ had erred in evaluating her obesity or by using boilerplate

language in her decision lacked merit. Id. at 11-13. Based on these findings, Judge Gargiulo recommended that Defendant's Motion to Affirm Commissioner's Decision be granted. Id. at 16.

A district judge has authority to review a magistrate judge's report and recommendation on dispositive motions, and is required to make a *de novo* determination of any portion of a report and recommendation to which a specific written objection is made. See 28 U.S.C. § 636(b); FED. R. CIV. P. 72(b). Thereafter, the district judge may accept, reject, or modify the recommendation of the magistrate; receive further evidence in the case; or recommit the matter to the magistrate with further instructions. Id. No objections to Judge Gargiulo's R and R have been raised.

Having reviewed the R and R, to which no objections were raised, the Court agrees that Defendant's Motion to Affirm Commissioner's Decision should be granted for the reasons stated by Judge Gargiulo. Accordingly, the Court will adopt Judge Gargiulo's R and R recommending the granting of Motion to Affirm Commissioner's Decision. As the granting of the Motion to Affirm Commissioner's Decision will end judicial review in this Court, a final judgment dismissing this case will be entered.

## **II. Conclusion**

For the foregoing reasons:

IT IS THEREFORE ORDERED that the July 29, 2016, Report and Recommendation of United States Magistrate Judge John C. Gargiulo [Docket No. 18], is hereby adopted as the ruling of this Court.

IT IS FURTHER ORDERED that Defendant's Motion to Affirm Commissioner's Decision [Docket No. 16] is hereby granted. A Final Judgment dismissing this case shall be entered this day.

SO ORDERED this the 18th day of August, 2016.

s/ William H. Barbour, Jr.  
UNITED STATES DISTRICT JUDGE